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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1933.

No. 920.

THE STATE OF TEXAS, *et al, Appellants,*

v.

THE UNITED STATES, *et al, Appellees*

Appeal from the District Court of the United States for the Western Division of the Western District of Missouri.

BRIEF FOR APPELLANTS.

To the Honorable Supreme Court of the United States:

STATEMENT

The opinion of the statutory court may be found reported in the advance sheets of the Federal Supplement, dated April 23, 1934, at page 63 of the sixth Federal Supplement.

The Kansas City Southern Railway Company, on February 13, 1932, made application to the Interstate Commerce Com-

mission for an order authorizing the acquisition by it of control, under lease, of the properties of the Texarkana and Fort Smith Railway Company that had not theretofore been leased to it. (R. 9). The line of the applicant, a Missouri corporation, extends from Kansas City, Missouri to Mena, Arkansas. That part of the line of the Texarkana and Fort Smith Railway which had not already been leased by the applicant was in two segments, one extending from Arkansas through the City of Texarkana, Texas, thence into Louisiana, a distance of approximately 31 miles, and the other or southern segment, which was approximately 50 miles in length, extended from the Louisiana-Texas line to the City of Port Arthur, Texas, situated in the southeastern part of Texas. (R. 9, 10).

In due course the State of Texas, the Railroad Commission of Texas, the City of Texarkana, Bowie County, Texas, and other interested parties made their appearance and objected only to the second paragraph of Section 5 of the proposed lease, which contained the following provision: (R. 11):

> "But the Southern Company (applicant does not assume the performance of any corporate obligations on the part of the Texarkana Company independent of its obligations as a common carrier. The Southern Company does not assume any obligation to maintain, during the term of this lease, any general offices, machine shops or roundhouses for or belonging to the Texarkana Company at any particular place or places, regardless of present or previous locations thereof; but shall have the right to change any existing location of general offices, machine shops, roundhouses and terminal facilities, belonging to the Texarkana Company, and to relocate the same, and, from time to time, to change the same, during the full term of this lease, and shall have the right to make all such locations, changes and alterations as in the judgment of the Southern Company will enable it to operate the demised premises in

the public interest and with the greatest economy and efficiency; and the Southern Company shall not be obligated or bound to perform any contractual, statutory or other obligations with reference to such matters which may now or hereafter rest upon the Texarkana Company; and any and all such chtnges may be made, from time to time, by the Southern Company as may be approved by the judgment of its officers or Board of Directors."

On December 27, 1932, by a six to five opinion, the Interstate Commerce Commission allowed and approved the proposed lease, with the exception, however, that they excluded the second paragraph of Section 5 above referred to and which was complained of by the then protestants. (189 I. C. C. 253).

A rehearing was later granted to the applicant, and on October 4, 1933, the original proposed lease was approved by the Commission with the inclusion of the second paragraph of Section 5, which was objected to by the protestants, appellants herein, and an appropriate order was entered by the Commission. (R. 28, 20-26).

The testimony of the applicant showed, which fact the appellants were not in a position to successfully controvert or deny, that a saving of practically $81,000 a year would be effected by the removal of the general offices of the Texarkana and Fort Smith Railway Company from the City of Texarkana, within the State of Texas, to Shreveport, Louisiana, and Kansas City, Missouri. (R. 23).

The Commission, in its last opinion, found that this expenditure would constitute a burden upon interstate commerce.

The laws of Texas,* which require that a railroad corporation operating within this State should be chartered under the Texas law and maintain a general office somewhere within the State, formed the main basis of the op

* Appendix "A"

position to the granting of the application in toto. In accordance with those laws the Texarkana and Fort Smith Railway Company had maintained at Texarkana, Texas, the following officers and their necessary staff: vice-president, auditor, treasurer, superintendent, general freight agent, general passenger agent, claim agent, and chief engineer. (R. 22).

On November 29, 1933, the appellants, the State of Texas, the Railroad Commission of Texas, the County of Bowie, and the City of Texarkana, duly filed their suit in Kansas City, Missouri, the residence of the applicant, Kansas City Southern Railway Company, to set aside that part of the order of the Interstate Commerce Commission allowing the removal of the general offices and officers above named from the State of Texas, and to enjoin such removal. (R. 1-8).

It was alleged that the defendant Texarkana and Fort Smith Railway Company was duly chartered under the laws of Texas and authorized to do business in said State as a carrier by railroads in the year 1885, and that under the laws then existing at the time of its incorporation, and now existing, it was necessary for said railroad company to first be chartered under the laws of Texas before it was authorized or permitted to construct, build, operate, acquire, own or maintain any railways within the State of Texas, and that it was further required to keep and maintain a general office within this State. (R. 2, 3, 6).

The above statutes were complied with and followed and the above mentioned officers and general offices were kept and maintained in Texarkana, Texas, until after the decision of the three-judge statutory court on February 6, 1934. It was alleged that the order of the Interstate Commerce Com-

mission granting the applicant the right to remove the general offices of the Texarkana and Fort Smith Railway Company from Texarkana, Texas, was erroneous and beyond and outside of the jurisdiction of the Interstate Commerce Commission, under any authority granted to it by Congress, and consequently such action on the part of the Commission was void. (R. 5, 6, 7).

It was likewise alleged that the Texarkana and Fort Smith Railway Company was bound by its charter provisions and the laws of Texas to continue to keep and maintain its general offices at Texarkana, Texas, so long as said railway company or any assignee or successor continued to operate the same within said State, and that it was the duty of the State of Texas and Railroad Commission to compel an observance and performance of such duties and laws. (R. 6).

All defendants, the Interstate Commerce Commission, The United States, Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, appellees herein, duly answered, and among other things the railway companies in their joint answer alleged:

> "'These defendants admit and allege that the defendant, Texarkana and Fort Smith Railway Company, has been and is now engaged in the general railroad business, and originally established and now maintains its general offices at Texarkana, Texas, the place designated in its charter as the principal office of said company, and has so maintained said office continuously, (except for a brief period during the war) * * * * and that except for the authority granted by the certificate and order of the Interstate Commerce Commission referred to herein, or other lawful authority, the said railroad would continue to so operate under compulsion of the statutes of the State of Texas.'"

R. 33, 34).

On the 12th day of February, 1934, the appellees' mo-

tion to dismiss the appellants' bill was sustained and probable jurisdiction having been noted, this cause is properly before this Court. (R 44, 45).

Reduced to its most limited sense, the appellants' single and sole contention is that the Interstate Commerce Commission was without power or authority to authorize the applicant railroad company to remove the general office of the Texarkana and Fort Smith Railway Company from within the confines of the State of Texas, as the Congress of the United States had never invested it with such power, and that, consequently, the order of the Commission was, to this extent, erroneous and void.

SPECIFICATION OF ERRORS

I.

The statutory court erred in holding and deciding that the Interstate Commerce Commission had the power and authority to authorize the Kansas City Southern Railway Company, a Missouri corporation, to acquire by lease the property of the Texarkana and Fort Smith Railway Company, a Texas corporation, with the inclusion in the authorized lease of the second paragraph of section five, which was duly objected to, by which such section and paragraph the Kansas City Southern Railway Company was granted authority to remove the general office of the Texarkana and Fort Smith Railway Company from the State of Texas.

Such order by and action on the part of the Interstate Commerce Commission was never authorized by Congress, either by the Transportation Act of 1920, or the amendment of June 16, 1933, (The Emergency Railroad Transportation Act) and was, therefore, erroneous and void. Moreover, said Emergency Railroad Transportation Act expressly prohibited it.

Since the Texarkana and Fort Smith Railway Company, incorporated under Texas law in 1885, was bound by its charter and the statutes of Texas to keep a general office within the State of Texas, and had complied with such charter and statutory duties by continuously maintaining in Texarkana, Texas, the following officers and their necessary staffs: vice-president, auditor, treasurer, superintendent, general freight agent, general passenger agent, claim agent, and chief engineer, and because it was within the police power of the State of Texas to require a corporation chartered by it to keep and maintain such a general office within the limit of its borders, in compliance with its laws and the charter granted by it, the statutory court erred in dismissing appellants' bill and in not setting aside that part of the Interstate Commerce Commission's order objected to and complained of, and in not granting the injunctive relief prayed for against the removal of such general office from Texarkana, Texas.

The burden on Interstate Commerce, if any, was remote and not direct. In any event, since the Interstate Commerce Commission did not have the power to make the order it did make, the same should be set aside and the State of Texas and Railroad Commission of Texas allowed to enforce the right that so clearly falls within the police provisions of Texas law, even though there should be some burden or extra expense incurred on account of the maintenance of the general office in Texarkana, Texas. (Assignments 1 to 10, R. 46-48).

Appellants' assignment of errors is separately printed in this brief as Appendix "B."

SUMMARY OF ARGUMENT

1. Congress has never vested the Interstate Commerce Commission with the authority to make the order in question. That it was the intent of Congress to deny such power, under the Transportation Act of 1920, is clear from the Conference Report by both branches of Congress and the joint explanation and agreement in regard thereto. In denying the right sought and power to grant the federal incorporation of railroads, it is clear that the field was not occupied or covered in this particular, and that legislative recognition was given to the then existing and reserved powers of the states. *Congressional Record*, Vol. 59, part 4, 66th Congress, 2nd Session, February 21st, March 13th, 1920, Pages 3263, 3327. This intent of Congress clearly appears from the explanation and agreement on page 3263 of the above mentioned Congressional Record and the explanatory statements of Senator Cummings with reference to said report, on page 3327.

Under its charter and the laws of Texas, the Texarkana and Fort Smith Railway Company was required to maintain a general office within the State of Texas. Articles 6260, 6275 and 6278 of the 1925 Revised Civil Statutes of Texas; Section 3, Article 10, of Constitution of 1876;* *International and Great Northern Railway Company v. Anderson County*, 246 U. S. 424, 38 S. Ct. 370, 62 L. E. 807.

The Court may, and, we submit, should, refer to the Congressional Record in order to ascertain the true legislative intent. *United States v. St. Paul M. &M. Ry. Co.*, 247 U. 310, 318, 38 S. Ct. 525, 62 L. Ed. 1130; *Northern Pacific Railway Company v. State of Washington Ex Rel., Atchison, Attorney General*, 222 U. S. 370, 380; *Duplex Co. v. Deering*, 254 U. S. 443, 474-475, 41 S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196; *Jett v. Montague Mfg., Co.*, 61 Fed. (2) 918, 920.

* Appendix "A"

Since the Texas statutes and requirements are a proper exercise of the State's police power, (*Eagle Insurance Company v. Ohio*, 153 U. S. 446; *International and Great Northern Railway Company v. Anderson County*, 174 S. W. 305, 31, writ of error denied by the Supreme Court of Texas, and affirmed by this Court in 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807; *Chicago, Burlington and Quincy Railway Company v. People of the State of Illinois Ex. Rel. Drainage Commissioners*, 200 U. S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175) the intention of Congress to exclude the exertion of such power must have been clearly manifested before it can first be said that Congress occupied the field, or intended to delegate such superior power to the Interstate Commerce Commission. *Napier v. Atlantic Coast Line R. Company*, 272 U. S. 605, 47 S. Ct. 207, 209, 71 L. Ed. 432; *Illinois Central Railroad Company v. Public Utilities Comm.*, 245 U. S. 493, 510, 38 S. Ct. 170, 62 L. Ed. 245; *Missouri, Kansas & Texas Railway Company v. Harris*, 234 U. S. 412, 419; *Savage v. Jones*, 225 U. S. 501, 533, 32, S. Ct. 715, 56 L. Ed. 1182; *Cummings v. Chicago*, 188 U. S. 410, 430.

2. That part of the Transportation Act of 1920, Paragraph 5, Section 8, Title 49 and the Emergency Railroad Transportation Act of June 16, 1933, *relating to all other restraints and prohibitions* has only to do with those things that might be in conflict with the fair meaning and express delegation of the language previously used. It was not intended to delegate authority for a change so far reaching, one that might permit whole communities to be disrupted, cause industrial centers to perish and cities to

be depopulated, in derogation of the state's police power. Such a sweeping change should not be brought about so lightly by a legislative enactment, without so stating, which was not done or expressed. *Interstate Commerce Commission v. Los Angeles*, 280 U. S. 52, 68-69, 50 S. Ct. 53; *International and Great Northern Railway Company v. Anderson County*, 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807; *Oregon, Washington R. & Nav. Company v. United States*, 47 Fed. (2d) 250, 257; *Napier v. Atlantic Coast Line Railroad Company*, 272 U. S. 605, 47 S. Ct. 207, 209, 71 L. Ed. 432; *Illinois Central Railroad Company v. Public Utilities Comm.*, 245 U. S. 493, 510, 38 S. Ct. 170, 62 L. Ed. 245; *Missouri, Kansas and Texas Railway Company v. Harris*, 234 U. S. 412, 419; *Savage v. Jones*, 225 U. S. 501, 533, 32 S. Ct. 715, 56 L. Ed. 1182; *Cummings v. Chicago*, 188 U. S. 410, 430.

3. The charter of the Texarkana and Fort Smith Railway Company with the State of Texas and the laws of Texas constituted such a "contractual obligation" with the State of Texas, under the Emergency Railroad Transportation Act of June 16, 1933, as to require and compel the carrier, by the superior law of Congress, to keep and maintain its general office within the State of Texas. The plain terms of the applicable provision of the Emergency Railroad Transportation Act are as follows:

> "Nothing in this title shall be construed to relieve any carrier from any contractual obligation which it may have assumed, prior to the enactment of this act with regard to the location or maintenance of offices, shops, or roundhouses at any point."

The charter of the railroad and the laws of Texas constitute a contract within the meaning of the foregoing language.

Dartmouth College Case, 4 Wheat. 518; *Gorman v. A. B. Leach & Company*, 11 Fed. (2d) 454 (456); *International and Great Northern Railway Company v. Anderson County*, 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807; *Yazoo & Mississippi Railroad v. Vicksburg*, 209 U. S. 358, 365; Section 3 of Article 10, Texas Constitution of 1876; *Home Bldg. & Loan Ass'n v. Blaisdell*, 78 L. Ed. (Advanced Sheets) 255, 264, 277, 54 S. Ct. ———, 88 A. L. R. 1481; *Bentler v. Cincinnati, C. & E. Ry. Co.*, 180 Ky. 497, 502, 203 S. W. 199, 201; Articles 6260, 6262, 6275 and 6278 Revised Civil Statutes of Texas, 1925.

The carrier has a right to continue to operate under its charter and the State laws, and this right could not be impaired by the State of Texas, (*Wilmington Railroad v. Reid*, 13 Wall. 264; *Rochester Railway Company v. Rochester*, 205 U. S. 236, 247, 27 S. Ct. 469, 51 L. Ed. 784; *Pearsall v. Great Northern Railway Company*, 161 U. S. 646, 661) even though the State might not compel the carrier to continue to operate, under certain circumstances. *Railroad Commission of Texas v. Eastern Texas Railroad Company*, 264 U. S. 79.

The State, in granting the charter, and even thereafter, had a right to require that a general office be kept within the State of Texas. *Maine v. Grand Trunk Railway Company*, 142 U. S. 217, 228, 12 S. Ct. 121, 35 L. Ed. 994; *Prudential Insurance Company v. Cheek*, 259 U. S. 530, 536; *Horn Silver Mining Company v. New York*, 143 U. S. 313; *Northern Pacific Railroad v. Dustin*, 142 U. S. 492, 499; *Northern Pacific Railway Company v. North Dakota*, 236 U. S. 585, 595.

The words *any contractual obligation . . . . assumed* are of the broadest meaning and effect; and if they are liberally construed, the charter contract and binding force of the state laws are included within them. A contractual

obligation of good faith had been made. Whether binding or not, it sounded of contract and there was a mutual obligation, which was recognized at the start, and carried on through the years.

Funk & Wagnalls' New Standard Dictionary defines "contractual" as:

"Implying or connected with a contract."

The same lexicographer defines "obligation" as meaning:

"The binding power of a promise, contract, oath, or vow, as of law, natural, civil, political or moral."

Webster's New International Dictionary defines "obligation" as meaning:

"Any duty imposed by law, promise, or contract, by the relations of society, or by courtesy, kindness," etc.

In *Edwards v. Kearzey*, 96 U. S. 595, 600, this Court said:

" 'Obligation' is defined to be 'the act of obliging or binding; that which obligates; the binding power of a vow, promise, oath, or contract,' " etc.

In the absence of limiting words, or the connection in which it is used, "obligation" is to be considered in its generic sense. *First National Bank of Chicago v. United States*, 38 Fed. (2d) 925, 930.

"Assume" is a most common word, meaning to take upon one's self, to do or perform, to undertake, (*Words and Phrases*, 4th Series, page 250; *Proctor Trust Company v. Neihart*, 288 Pac. 574, 577, 130 Kan. 698) and "any" was likewise used in its broad sense. *Word and Phrases, 4th Series* 168.

The term "any contractual obligation which it may have assumed" is unlimited and all inclusive and broad enough to not only include the general office in Texarkana, Texas,

but to also interdict a removal of such general office. Moreover, this Court has said that it would give a broader meaning to this Act than even mere dictionary terms.

4. The burden on Interstate Commerce, if any, was remote and not direct. *International and Great Northern Railway Company v. Anderson*, 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807; *Pennsylvania Railroad Company v. Hughes*, 191 U. S. 477, 488; *Boston & Maine Railroad Company v. Armsburg*, 285 U. S. 234, 76 L. Ed. 729.

The exercise of the State's police power in this case is a reasonable one. *Pennsylvania Railroad Company v. Hughes*, 191 U. S. 477, 488; *Wisconsin, Minnesota and Pacific Railroad v. Jacobson*, 179 U. S. 287, 302.

Such right was not only recognized by the Interstate Commerce Commission for a long period of time, (189 I. C. C. 253; 193 I. C. C. 521) which fact should be persuasive, *New York Central Securities Corporation v. United States*, 287 U. S. 12, 53 S. Ct. 45, 77 L. Ed. 138) but it is one of the policy powers of a sovereign state that has heretofore been oftentimes recognized and upheld by this Court. *Missouri Pacific Railroad Company v. Norwood*, 283 U. S. 249, 51 S. Ct. 458; *Nashville, etc Railway v. White*, 278, U. S. 456, 49 S. Ct. 189, 73 L. Ed. 452; *Missouri, Kansas & Texas Railway Company v. Harris*, 234 U. S.412; *Smith v. Alabama*, 124 U. S. 465; *Gulf Railway Company v. Texas*, 246 U. S. 558; *Lake Shore Railway v. Ohio*, 173 U. S. 285; *Gladson v. Minnesota*, 166 U. S. 427; *C. B. & Q. Railway v. Drainage Commissioners*, 200 U. S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 175; *Atlantic Coast Line Railroad Company v. State of Georgia*, 234 U. S. 280, 58 L. Ed. 1312.

ARGUMENT

The order entered by the Interstate Commerce Commission in this cause, permitting the removal of the general office in question, was in conflict with the statutes of Texas, which same were a valid exercise of the state's police power. Inasmuch as the State has clear, statutory authority for its action and the Interstate Commerce Commission acted in excess of any authority ever granted or delegated to it by Congress, in authorizing the Kansas City Southern Railway Company, a Missouri corporation, to acquire control of the properties of the Texarkana and Fort Smith Railway Company, a Texas corporation, by lease, with the inclusion of Section 5 of paragraph 2 in the lease, which permitted the Kansas City Southern Railway Company to move the general office of the Texarkana and Fort Smith Railway Company from Texarkana, Texas, in violation of the statutes of Texas and the charter of the Texarkana and Fort Smith Railway Company that required the maintenance of such general office within the State of Texas, the statutes of the State should not be rendered nugatory and the order permitting such removal should be set aside, even though a compliance with the Texas statutes did constitute some burden on interstate commerce, as such burden was remote and not direct.

As stated, we take our position and base our hopes before this Honorable Court on one solitary point, viz:

Has Congress ever vested the Interstate Commerce Commission with the power to make the order in question?

Does the Commission, within the compass of the power delegated to it, have the authority to permit a railroad to move its general office to a sister state, when such a railroad was incorporated in Texas in 1885, and under its charter provisions and the laws of Texas, both of which still exist without change, it was required to maintain a general office within the State of Texas?

We are reasonably confident that this Honorable Court has not yet decided this question adversely to the contention herein made.

At the outset, we desire to say that an adverse decision should not be rendered now. Because, in the first place, Congress never so intended, and this fundamental principle that strikes at the heart of government should not fall or be stricken down. That Congress never intended that such a thing should be done, as has been done, is clear from the Congressional Record.

After prolonged and tedious debates in both branches of our legislative body, beginning in the fall time of 1919, extending throughout the winter, and on until spring, a Conference Report, which was later adopted by both the House and Senate, without change, was agreed upon. *Congressional Record*, Vol. 59 Part 4, 66th Congress, 2nd Session, February 21st, March 13, 1920, Pages 3243 et seq., to 3260.

This report was accompanied by a joint agreement and explanation, as to just what is meant, page 3260.

We quote from pages 3263 as follows:

"FEDERAL INCORPORATION.

"The House bill contained no provisions for Federal incorporation of railway carriers. The Senate amendment in sections 15 to 20, inclusive, provided for the conversion of State railroad corporations into Federal corporations, and in sections 21 to 23, inclusive, provided for the incorporation of new Federal railroad corporations, and in Section 32 provided for the dissolution of such Federal corporations. These provisions, in connection with the compulsory consolidation provisions in the Senate amendment, were intended to bring about eventual Federal incorporation of all railroad carriers. The conference bill strikes out all of these sections providing for incorporation, reincorporation, and dissolution of Federal railroad corporations." (Congressional Record—House, Vol. 59, Part 4, Page 3263).

Mr. Cummings, who introduced the original bill in the Senate and who was the manager on his side of the House,

and with Mr. Esch of the House of Representatives, responsible for its passage, in his remarks with reference to this conference report, said:

> "Second. The Senate bill provided, under certain conditions, for Federal incoropration of railway companies, either by reincorporation of existing companies or original organization under Federal law. The House conferees were so inflexibly opposed to this principle that in order to reach any conclusion the Senate conferees were compelled to yield; and the bill as now reported contains no authority for Federal incorporation in any form." (Congressional Record Senate, Vol. 59, Part 4, page 3327).

It is our specific contention that Congress did not grant the Interstate Commerce Commission the power to authorize the lease in question. The long drawn out proceedings of Congress with reference to this important and far reaching piece of legislation may be searched in vain for any intent or indication that the very thing done in this case would or should be done. The intent of Congress is flatly and plainly to the contrary.

Should this intent of Congress not be given effect?

Should a power so far reaching not be better or more definitely expressed before a Court ought to sustain it?

If Congress had intended that the very thing done in this cause be done, then why should it have voted down the very words that were clearly expressed to effectuate this purpose?

We submit with candor and earnestness that each question answers itself. An idle or hastily drawn and quickly passed piece of legislation, in time of war, might be interpreted differently, but such a construction or incongruity should not be given effect here. There is no doubt but what Congress was opposed to the Federal incorporation of railroads. Had it not been so opposed, and had it

passed the original Senate Bill, as sponsored by Mr. Cummings, without any subsequent changes, then this litigation would not have been possible or necessary. Since Congress, in effect, said that we were to have our rights, or that it refused to let our Interstate Commerce Commission abrogate them with one fell swoop of the pen, then should they not be preserved and recognized now, especially in view of the Emergency Railroad Trasportation Act, as hereinafter pointed out?

In the case of *United States v. St. Paul M. & M. Railway Company*, 247, U. S. 310, 318, 38 S. Ct. 525, 62 L. E. 1130, this Court, in speaking through Justice Pitney, said:

> "But the reports of a committee, including the bill as introduced, changes made in the frame of the bill in the course of its passage, and statements made by the committee chairman in charge of it, stand upon a different footing, and may be resorted to under proper qualifications. Blake v. National Banks, 23 Wall. 307, 317; Holy Trinity Church v. United States, 143 U. S. 457, 464; Dunlap v. United States, 173 U. S. 65, 75; Binns v. United States, 194 U. S. 486, 495; Johnson v. Southern Pacific Co., 196 U. S. 1, 20; Pennsylvania R. R. Co. v. International Coal Co., 230 U. S. 184, 198; Five Per cent. Discount Cases, 243 U. S. 97, 107.'" (United States v. St. Paul, M. & M. Ry. Co., 247 U. S. 318).

In *Northern Pacific Railway Company v. State of Washington Ex. Rel. Atkinson, Attorney General*, 222 U. S. 370, 380, it was said:

> "Finally, the convictions which arise from the fact of the postponement are made plain by a report on the bill made to the House of Representatives by the Committee on Interstate and Foreign Commerce." (Northern Pacific Railway Co. v. Attorney General, 222 U. S. 380).

In *Duplex Company v. Deering*, 254 U. S. 443, 474-475, 41

S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196, this Court said:

> "But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. Binns v. United States, 194 U. S. 486, 495. And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. Binns v. United States, Co., supra; Pennsylvania R. R. Co. v. International Coal Co., 230 U. S. 184, 198-199; United States v. Coca Cola Co., 241 U. S. 265, 284; Minneapolis & Manitoba Ry. Co., 247 U. S. 310, 318." (Duplex Company v. Deering 254 U. S. 474, 475).

In *Jett v. Montague Manufacturing Company*, 61 Fed. (2d) 918, 920, the Court of Appeals of the District of Columbia, in speaking through Justice Martin, said:

> "It is settled law that the report of a committee of either House of Congress recommending the passage of a bill with explanatory statements concerning the same may be consulted to ascertain the intent of the lawmaking body in its enactment. U. S. v. St. Paul M. & M. Railway, 247 U. S. 310 and 318, 38 S. Ct. 525, 62 L. Ed. 1130; Duplex Printing Press Company v. Deering, 254 U. S. 443, 474, 41 S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196." (Jett v. Montague M'f'g. Co., 61 Fed. (2d) 920).

It is to be borne in mind that this is not a consolidation case, but one of acquisition, by *lease*. *New York Central Securities Corporation v. United States*, 287 U. S. 12, 53 S. Ct. 45, 77 L. Ed. 138.

So that, the question presented, as we see it, is:

First, does a fair interpretation of the federal legislation show that Congress has occupied the field to the exclusion of the state, and that such federal legislation is in conflict with the state law?

Second, is the state requirement and the agreement of the railroad under its charter unreasonable; or is its integrity.

and preservation not recognized and provided for in the Emergency Railroad Transportation Act that became effective on June 16, 1933?

We deem the following language which was used by Chief Justice Hughes in the *Atchison, T. & S. F. Railway Company v. Railroad Commission*, 283 U. S. 380, 51 S. Ct. 553, 556, to be applicable:

> "Such an intention to override existing state authority to deal with local exigencies is not to be imputed to Congress unless its enactment compels that conclusion."
>
> In the same opinion, it is further said:
>
> "The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the state of its authority as to matters not covered by the federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State. Savage v. Jones, 226 U. S. 501, 533, 32 S. Ct. 715, 56 L. Ed. 1182; Atlantic Coast Line Railroad v. Georgia, 234 U. S. 280, 293, 294, 34 S. Ct. 829, 58 L. Ed. 1312; Southern Railway Company v. Railway Commission, 236 U. S. 439, 446, 35 S. Ct. 304; 59 L. Ed. 661; Illinois Central Railroad Company v. Public Utilities Commission, 245 U. S. 493, 510, 38 S. Ct. 170, 62 L. Ed. 425; Carey v. South Dakota, 250 U. S. 118, 122, 39 S. Ct. 403, 63 L. Ed. 886; Lehigh Valley Railroad Company v. Public Utility Commissioners, 278 U. S. 24, 35, 49 S. Ct. 69, 73 L. Ed. 161, 62 A. L. R. 805; International Shoe Company v. Pinkus, 278 U. S. 261, 265, 49 S. Ct. 108, 73 L. Ed. 318." Atchison T. & S. F. Ry. Co. v. Railroad Commission, 51 S. Ct. 556).

Surely, it will not be doubted or controverted that the requirement in question is a proper exercise of the state's police power. *Eagle Insurance Company v. Ohio*, 153 U. S. 446; *International & G. N. Railway Company v. Anderson County*, 174 S. W. 305 (318), writ of error refused by the Supreme Court of Texas, and affirmed by this Court in 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807; *Chicago, Burlington and Quincy*

Railway Company v. People of the State of Illinois ex rel. Drainage Commissioners, 200 U. S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175.

Since the Texas statutes and requirements are a proper exercise of the State's police power, then it should logically follow, that before any court would be authorized in holding that the exertion of such power should be excluded, the intention of Congress to so exclude it, must have been clearly manifested, and this, we submit, has not been done.

In *Napier v. Atlantic Coast Line R. Company*, 272 U. S. 605, 47 S. Ct. 207, 209, 71 L. Ed. 432, Justice Brandeis, in speaking for the Court, said:

> "The intention of Congress to exclude states from exerting their police power must be clearly manifested,"

citing *Reid v. Colorado*, 187 U. S. 137, 148, 153, 23 S. Ct. 92, 47 L. Ed. 108; *Savage v. Jones*, 225 U. S. 501, 525, 533, 535, 32 S. Ct. 715, 56 L. Ed. 1182.

In *Illinois Central Railroad Company v. Public Utilities Comm.*, 245 U. S. 493, 510, 38 S. Ct. 170, 62 L. Ed. 245, Justice Van Devanter, in speaking for the Court, said:

> "In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested,"

citing *Reid v. Colorado*, 187 U. S. 137, 148; *Cummings v. Chicago*, 188 U. S. 410, 430; *Savage v. Jones*, 225 U. S. 501; *Missouri, Kansas & Texas Railway Company v. Harris*, 234 U. S. 412, 419.

In the case of *Missouri, Kansas & Texas Railway Company v. Harris*, 234 U. S. 412, 419, Justice Pitney, quoting in part

from the language used by Justice Hughes in *Savage v. Jones*, 225 U. S. 501, 533, said:

> "'But the intent to supersede the exercise by the state of its police power as to matters not covered by Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the state.'"

citing many cases.

The case of *Cummings v. Chicago*, 188 U. S. 410, 430, is to the same effect, and we respectfully call attention to the facts of that case.

No doubt, it will be answered that the authority of the Interstate Commerce Commission may be upheld under that part of the Transportation Act of 1920, Paragraph 5, Section 8, Title 49 and the Emergency Railroad Transportation Act of June 16, 1933, *relating to all other restraints and prohibitions.*

In the first place, the requirement that a state chartered railroad should merely keep a general office within the confines of the state that created it, is not a restraint and neither is it a prohibition.

If by the use of the term "all other restraints and prohibitions" Congress was not still referring to the anti-trust laws, then it must have reasonably intended such of the laws of the state that were in conflict with the exercise of the power expressly granted to the Commerce Commission, or that could fairly be said to have been granted to it, within the fair meaning and compass of the language previously used. Surely, it was not legislated or intended that the Commerce Commission could do anything, the federal government and the laws of the states to the contrary, notwith-

standing. Note: The language of Chief Justice Taft in *Interstate Commerce Commission v. Los Angeles*, 280 U. S. 52, 68-69, 50 S. Ct. 53, and also: *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U. S. 14, 35, 53 S. Ct. 266; *United States v. Chicago North Shore & Milwaukee Railroad Co.*, 288 U. S. 1.

In the second place, we still contend, that a change so far reaching, one that might permit whole communities to be disrupted, cause industrial centers to perish and cities to be depopulated, one that was contrary to all that has ever been, should not be brought about so lightly by a legislative enactment, without so stating.

Might it not be contended with equal vigor, and far greater force, that by its very terms, the Emergency Railroad Transportation Act of June 16, 1933, required and compelled the carrier to abide by its "contractual obligation" with the State of Texas, and that under the very law under which a removal is sought, this relief is denied? For it was provided, in part:

> "Nothing in this title shall be construed to relieve any carrier from any contractual obligation which it may have assumed, prior to the enactment of this act with regard to the location or maintenance of offices, shops, or roundhouses at any point."

We again call attention to the fact that appellants alleged that the Texkana and Fort Smith Railway Company was bound by its *charter provisions*, and the laws of Texas to keep and maintain its general offices at Texarkana, Texas, so long as it was operated within the State, (R. 6) and that, among other things, the two railway companies, in their joint answer admitted and alleged:

> "These defendants admit and allege that the defendant, Texarkana and Fort Smith Railway Company, has been and is now engaged in the general railroad business, and originally established and now maintains its general

> offices at Texarkana, Texas, the place designated in its charter as the principal office of said company, and has so maintained said office continuously, (except for a brief period during the war) * * * * and that except for the authority granted by the certificate and order of the Interstate Commerce Commission referred to herein, or other lawful authority, the said railroad would continue to so operate under compulsion of the statutes of The State of Texas." (R. 33, 34).

It will, of course, again be contended that by the term "any contractual obligation which it may have assumed" was meant a contract in writing, duly entered into in a most sacrosanct manner and attended by all of the solemnities and formalities known to law.

But Congress did not say that. It is to be presumed that the members were familiar with the *Dartmouth College Case*, 4 Wheat. 518 and such decisions as *International & Great Northern Railway Company v. Anderson County*, 246 U. S. 424, 38 S. Ct. 370, 62 L. Ed. 807, as well as the great host of other decisions along similar lines. We do not know what this Court thinks of the Dartmouth case. It has never been overruled. It was cited with approval as late as 1930 in *Coolidge v. Long*, 282 U. S. 582, 595, and also in the majority and dissenting opinions of Home Bldg. & Loan Ass'n. v. Blaisdell, 78 L. Ed. (Advanced Sheets) 225, 264, 277, 54 S. Ct. ———, 88 A. L. R. 1481. This Court knows the history of this case, the criticisms it has met with, and favors it has received and the genius of its author. We submit that it is embedded in the annals of American jurisprudence and has been cited more widely and more often than any decision that has ever been handed down in all of the history of our country. To the writer, it seems to have strong analogy, at least, historically, because it bespeaks the early history and beginning of railroads in this State. This Court judicially knows of the bounteous gifts of more than 32,000,000 acres of Texas public lands to railways as an inducement for the

extension and construction of their lines in the State. The charter under consideration in the Dartmouth case was with reference to a private charity that was supported by the gift of public funds. Being an educational institution, it was also quasi-public in nature.

But whether this opinion is still to be regarded as it has been, or as having "probably contributed as much as any he ever delivered to the great reputation of Chief Justice Marshall," (*Pearsall v. Great Northern Railway*, 161 U. S. 646, 661) or has, too, fallen with the trend of the times, we submit that it does still have weight for its historical precedent and background, and that a charter and statutes of the kind in question constitute the assumption of a "contractual obligation," whether forever binding or not, and that Congress was aiming against and enacting a prohibition in restraint of the very thing that the appellees in this cause contend for. Home Bldg. & Loan Ass'n. v. Blaisdell, 78 L. Ed. (Advanced Sheets) 255, 264, 277, 54 S. Ct. ———, 88 A. L. R. 1481; Bentler v. Cincinnati, C. & E. Ry. Co., 180 Ky. 497, 502, 203 S. W. 199, 201.

The Texas statutes in question are but a carrying out of Section 3 of Article 10 of the Texas Constitution, adopted in 1876, which, in part, provides:

> "Every railroad or other corporation, organized or doing business in this state under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business. . . . . "

Does the Texarkana and Fort Smith Railway Company of Texas have a charter right to operate a railroad that could, under any circumstances, be abrogated by the State of Texas, its legislature, or railroad commission?

It does not and we submit that there are none who would so contend. *Wilmington Railroad v. Reid*, 13 Wall. 264;

Rochester Railway Company v. Rochester, 205 U. S. 236, 247, 27 S. Ct. 469, 51 L. Ed. 784; *Pearsall v. Great Northern Railway*, 161 U. S. 646, 661.

Although the railroad may operate forever, if it complies with the law, the state cannot compel it to continue operations, even in intrastate commerce. *Railroad Commission of Texas v. Eastern Texas Railroad Company*, 264 U. S. 79. This does not mean, however, that it is not under a duty or agreement to do so, or that it is not amenable to the law so long as it exercises the privileges of a carrier. *Yazoo & Mississippi Railroad v. Vicksburg*, 209 U. S. 358, 365.

Since the railroad began operating with a general office in Texarkana, Texas, under its charter duties and the laws of Texas, and so continued to operate until a few months ago, we submit that it is justly and clearly under a "contractual obligation," and was under such obligation when the Emergency Railroad Transportation Act was passed, just as much so, in equity and fair dealing, as any man and woman who ever went through the nuptial ceremony. Either party might abandon the other or violate the agreement, but surely this could not change the fact that there was a contractual obligation. In this case, the State is unalterably bound and has been at all times, and under the recent amendment of Congress, the railroad should be likewise bound, in keeping with a clear legislative pronouncement.

In *Gorman v. A. B. Leach & Company*; 11 Fed. (2d) 454 (456) it is appropriately said:

> "A charter is a contract. Dartmouth College v. Woodward, 4 Wheat 518 at page 625, 4 L. Ed. 629. One of the essential parts of a charter of a corporation is the certificate filed by it for the purpose of incorporation. Baltimore Co. v. Koontz, 104 U. S. 5, 26 L. Ed. 643; 14 Corpus Juris, 108. One of the essential parts of this certificate, and hence of the charter as a whole, is the statement required by the statute, where in the state the

> corporation is to have its 'principal office' or "principal place of business.'" (Gorman v. A. B. Leach & Co., 11 Fed. (2d) 456).

We respectfully submit:

That in the first instance, under the Transportation Act of 1920, Congress refused to take from the state the sole, limited, humble and respectable right of requiring a corporation chartered by it to keep a general office within the State, and confer such power upon the Interstate Commerce Commission.

And that, under the Emergency Railroad Transportation Act of 1933, it plainly stated that such power was not delegated and could not be exercised.

Many exceptions and provisions were contained in the last Act. There was a reason for the one in question, as it involved a great principle. It is true much power was given, but that is when exceptions should and do arise. A right so limited, so clearly within the police power of the State, should never be denied or abridged, until there has first been a positive enactment against its exercise.

Many cases by this Court have laid down the general rule of the power and right of a state relative to a corporation created by it.

In *Bank of Augusta v. Earle,* 13 Peters 519, 588, Chief Justice Taney, in speaking for the Court, said:

> "It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty." (Bank of Augusta v. Earle, 13 Peters 588).

In *Maine v. Grand Trunk Railway Company*, 142 U. S. 217, 228, 12 S. Ct. 121, 35 L. Ed. 994, it is said:

> "As the granting of the privilege rests entirely in the discretion of the state, whether the corporation be of domestic or foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the state in its judgment may deem most conducive to its interest or policy." (Maine v. Grand Trunk Railway Company, 142 U. S. 228).

In *Prudential Insurance Company v. Cheek*, 259 U. S. 530, 536, the rule, speaking generally, is laid down:

> "It is a creature of the law; and a state in authorizing its own corporations or those of other states to carry on business and employ men within its borders may qualify the privilege by imposing such conditions and duties as reasonably may be deemed expedient in order that the corporation's activities may not operate to the detriment of the right of others with whom it may come in contact." Prudential Insurance Company v. Cheek, 259 U. S. 536).

Note: *Horn Silver Mining Company v. New York*, 143 U. S. 313. *Northern Pacific Railroad v. Dustin*, 142 U. S. 499; *Northern Pacific Railway Company v. North Dakota*, 236 U. S. 585, 595.

With the many past decisions of this Court in mind and the history of our country in view, in using the words "restraints and prohibitions," was Congress not referring to those state or federal laws that were in direct opposition to and in violation of what it had fairly and clearly granted? It is a matter of common knowledge that practically every state in the union had statutory and constitutional provisions that were in conflict with the very things permitted and the broad authority granted to the Commerce Commission by the Transportation Act of 1920.

Was not Congress, therefore, permitting the Commission

to have a free hand in the things that had been fairly delegated to it?

Was it not by the use of such terms allowing the Commission, under the power granted it, to get around such decisions as:

Mobile, Jackson & R. R. Company v. Mississippi, 210 U. S. 187,

Oregon Railway and Naviagtion Company v. Oregonian Railway Company, Limited, 130 U. S. 1, 8 S. Ct. 409, 32 L. Ed. 837,

The York & Maryland Line Railroad Company v. Winans, 17 Howard 30?

The very language used in Title I of the Emergency Railroad Transportation Act ("other than such as are for the protection of the public health or safety") clearly indicates that the state requirement in question had not previously been taken away, or else there would have been no use or reason for this addition.

But in any event, the Texas requirement that a railroad chartered by it, must maintain a general office within the State, has never been rendered nugatory by any authority vested in the Commerce Commission by Congress. Furthermore, the plain language already referred to, requires the same thing that the Texas law does. The language is not that the carrier must have entered into a contract or agreement. It is broad and liberal. It means more than a simple contract or even a technical one. It mean *any contractual obligation*, regardless of who made it or how it was incurred, or by whom it was assumed, taken on or may have been undertaken.

The word "contractual" has been defined by Funk & Wagnalls' New Standard Dictionary to mean:

"Implying or connected with a contract."

The same lexicographer defines obligation as meaning:

> "The binding power of a promise, contract, oath, or vow, or of law, natural, civil, political or moral."

Webster's New International Dictionary defines "obligation" as meaning:

> "Any duty imposed by law, promise, or contract, by the relations of society, or by courtesy, kindness," etc.

In *Edwards v. Kearzey*, 96 U. S. 595, 600, this Court said:

> "'Obligation' is defined to be 'the act of obliging or binding; that which obligates; the binding power of a vow, promise, oath, or contract,'" etc.

In *First National Bank of Chicago v. United States*, 38 Fed. (2d) 925 (930) the Court said:

> "'Obligations is a generic word, and includes all kinds of contracts by which contracting parties bind themselves, and, in the absence of limiting words, or the connection in which it is used, will be construed in its generic sense,'"

citing *Sinton v. County of Carter*, (C. C.) 23 Fed. 535, 538.

"Assume" is a most common word, which means to take upon one's self, to do or perform, to undertake. *Proctor Trust Company v. Neihart*, 288 Pac. 574, 577, 130 Kan 698; *Words &Phrases*, 4th Series, page 250.

We likewise submit that the word "any" was used in its broad sense. *Words & Phrases*, 4th Series, page 168.

The term "any contractual obligation which it may have assumed" is broad, unlimited and all inclusive. It includes the general office at Texarkana, Texas, and we submit that this unlimited, broad, plain language interdicts a removal of such general office. Moreover, this Court has said that such language should receive a broader meaning than may be ascribed to it by a mere dictionary.

In the case of *International and Great Northern Railway Company v. Anderson County,* 246 U. S. 424, (433), Justice Holmes, in speaking for the Court, said:

> "Apart from these considerations we should be slow to say that it was not within the power of a state legislature dealing with a corporation of the state to fix the place of its domicile and principal offices, in the absence of other facts than those appearing in this case. But, furthermore, when the Office-Shops Act was on the statute book the plaintiff in error took out a charter under general laws that expressly subjected it to the limitations imposed by law. It is said that this does not make the plaintiff in error adopt an otherwise unconstitutional statute. But even if, contrary to what we have intimated, the act could not otherwise have affected those particular corporations, it was a law upon the statute books and was far from a mere nulity, and if it was made a condition of incorporation that this restriction should be accepted, the plaintiff in error cannot complain. Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 79, 52 L. Ed. 111, 28 Sup. Ct. Rep. 26, 12 Ann. Cas. 555. We agree with the state courts that the condition was imposed." (International and Great Northern Railway Company v. Anderson County, 246 U. S. 433).

In view of the broad language used in the Emergency Railroad Transportation Act, the above decision, the history of railroads, and the host of authorities by both federal and state courts, we urge that Congress has not only withheld power for the removal of such general office, but that it has gone further and legislated against any removal at all. In other words, it has acknowledged and approved the state law, making this a dual system of government, as in matters of this kind it, of right, should be.

In the event the finding of the Interstate Commerce Commission, to the effect that the maintenance of the general office would cast an undue burden on interstate commerce, should have any force or effect, this would become im-

material and pass out of the case, if we are right in our position, that Congress has legislated against the removal of the office, under the facts of this case. We further believe that the same result should follow if it is determined that the Commerce Commission exceeded its power and authority.

In any event, however, the burden on commerce was remote and not direct. *International & Great Northern Railway Company v. Anderson*, 246 U. S. 424, 38 S. Ct. 380, 62 L. Ed. 807; *Pennsylvania R. R. Company v. Hughes*, 191 U. S. 477, 488; *Boston & Maine Railroad Company v. Armburg*, 285 U. S. 234, 76 L. Ed. 729.

The only right contended for is that a general office be kept within the borders of Texas; that the carrier in question, or its lessor, only keep, as it has in the past, "the following officers and their necessary staffs (if any): vice-president, auditor, treasurer, superintendent, general freight agent, general passenger agent, claim agent and chief engineer," or that, as is required by Article 6278 of the 1925 Revised Civil Statutes of Texas, "the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained."

We submit that such requirement is legal, just and reasonable, and that it properly falls within that right belonging to and doctrine reserved to the states of the American union.

This Court has upheld the police power of the states in many cases, some of which are the following:

Missouri Pacific Railroad Company v. Norwood, 283 U. S. 249, 51 S. Ct. 485; *Nashville, etc. Railway v. White*, 278 U. S. 456, 49 S. Ct. 189, 73 L. Ed. 452; *Missouri, Kansas & Texas Railway Company v. Harris*, 234 U. S. 412; *Smith v. Alabama*, 124 U. S. 465; *Gulf Railway Company v. Texas*, 246 U. S. 558; *Lake Shore Railway v. Ohio*, 173 U. S. 285; *Gladson v. Minnesota*, 166 U. S. 427; *C. B. & Q. Railway v. Drain-*

age Commissioners, 200 U. S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 175; *Atlantic Coast Line Railroad Company v. State of Georgia*, 234 U. S. 280, 58 L. Ed. 1312.

CONCLUSION

We are not unmindful of the many decisions of this Court that accord to the Transportation Act of 1920 a broad and liberal construction; that have stricken down obstacles in the path of the "public interest," and have upheld the action of the Interstate Commerce Commission, where mony could be saved, or unification effected. These cases were as they should have been, for they were based upon authority that was fairly delegated and properly exercised.

This Honorable Court has never held adversely to the contention that appellants now make. It is the one we started out with. We believed we were right then and feel fortified by the passange of the Emergency Railroad Transportation Act. The case of International & Great Northern Railway v. Anderson County, supra, is more like the case at bar than any previous decision of this Court, in so far as we have been able to find out from our own research, or from what others have yet furnished or expounded.

We recognize that a strong argument can be made on the facts of this particular case. Such facts are the rarest kind of an exception. They will never be the rule and could not occur again in the vast domain of Texas. But that does not change the principle involved or minimize its importance.

In its opinion, the statutory court began by saying that:

> "The question seems to us scarcely debatable."

The closing sentence was:

> "A more intolerable burden on commerce among the states can *scarcely be imagined*."

Yet, the record shows that no money was being lost on the Texarkana and Fort Smith railroad line in Texas, (R. 25) and does not show that the system as a whole was not making an adequate revenue. One viaduct, a single underpass, station or roundhouse could *be imagined* to cost much more and we submit that one would not have to give reign to fancy for an imagination as to the existence of far greater or more *"intolerable burdens."* Whatever burden on interstate commerce that that could be said to exist is certainly remote and not direct.

The Texas statute (Article 6278) is reasonable and just. It is not difficult to comply with. By its fair meaning and plain language, it simply requires that a general office be kept and maintained within this State.

The essence of what is required of the Texarkana and Fort Smith Railroad Company simply is:

> " . . . . And the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained."

This does not require the keeping or maintenance of unnecessary officers upon the payroll of the railroad company, unless it voluntarily chooses to do so. It may be the judge of that. All is required is that the general office be within this State and that those who perform the duties of such general office do so at the place where it is situate. As a general rule, the railroad may locate its general office any place on its line that it desires, and with the approval of the Railroad Commission of Texas, it may change the location within the State. Article 6286 of 1925 Revised Civil Statutes of Texas.

We respectfully answer that the language of the three

judge statutory court to the effect that "a more intolerable burden on commerce among the state can scarcely be imagined" was ill-chosen and unfounded. Whether the question is a debatable one or not, as it did not apparently seem to be so considered by the statutory court, is for this Court to now determine. The Interstate Commerce Commission evidently entertained a contrary view. (R. 9-28, 18). In all of its debates, we have failed to find where Congress has expressly or impliedly sanctioned the authority that has been exercised by the Commerce Commission in this case.

For years, the Interstate Commerce Commission has never thought it had the power that it has exercised in this case, although administrative bodies are as a rule not loath to test even a doubtful power. 189 I. C. C. 253, 193 I. C. C. 521. In case of doubt or ambiguity, this construction is entitled to substantial weight or to be deemed persuasive. *New York Central Securities Corporation v. United States*, 287 U. S. 12, 53 S. Ct. 45, 77 L. Ed. 138; *United States v. Chicago North Shore R. Co.*, 288 U. S. 1, 13, 14, 53 S. Ct. 245, 248.

The first decision before the full Commission in this case was rendered on December 27, 1932. It was not until October 4, 1933, that it was decided that it had the power or authority to approve the proposed lease with the paragraph in question.

We reiterate that Congressional authority was wanting for such action under the Transportation Act of 1920 and that it was expressly forbidden by the fair meaning of the Emergency Railroad Transportation Act of June 16, 1933, and we submit this cause to this Court on what Congress did do, and not what it might have done or failed to do, knowing this Court will interpret what was done and not what it might think should have been done, for in the words

of a great American and most eminent jurist:

"If we did entertain grave doubt as to the wisdom or ultimate effectiveness of the legislative policy, we should be faithless to our supreme obligation if we interpreted the great generalities . . . . as crystallizing our own notions of policy, our personal views of economics, and our theories of moral and social improvement."

Not that we have any doubt about the soundness of our position, or the principle in issue, but because Congress did not take it away in 1920, and expressly recognized it in 1933.

It is respectfully prayed that the judgment of the trial court be reversed; that the order of the Interstate Commerce Commission herein complained of be set aside, and that all other appropriate relief be granted.

Respectfully submitted,

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APPENDIX "A."

STATUTES AND CONSTITUTION OF TEXAS

Art. 6260. (6406) Who may build.—No corporation, except one chartered under the laws of Texas shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State. (Acts 1903, p. 90.)

Art. 6275. (6423) (4367) To keep offices in Texas.—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration. (Acts 1889, p. 130; G. L. Vol. 9, page 1158.)

Art. 6278. (6424) (4368) Officers to keep offices in Texas.—Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, *and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained;* and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad com-

pany to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place. (Id. Acts 1899, p. 177.)

Art. 6286. (6435) (4376) Change of general offices prohibited.—No railroad company shall change the location of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices, machine shops or roundhouses to previous locations when ordered or required under judgments in suits now pending in trial or appellate courts. (Acts 1915, p. 35.)

Article 10, Section 3, Texas Constitution: Explanatory

The resolution proposing this amendment has the word "Article" instead of "Sec." in first line.

Sec. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and where shall be kept for inspection by the stockholders of such

corporation, books, in which shall be recorded the amount of capital stock, subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the President or Superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report, shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this Section.

APPENDIX "B"

APPELLANTS' ASSIGNMENT OF ERRORS (R. 46-48).

1.

The court erred in sustaining the motion of the defendants to dismiss complainants' bill.

2.

The court erred in holding and deciding that complainants' bill did not state a cause of action.

3.

The court erred in rendering judgment for defendants by dismissing complainants' bill.

4.

The court erred in not rendering judgment for complainants by setting aside the order of the Interstate Commerce Commission, which allowed the general offices in the city of Texarkana to be moved by the defendant railroad companies.

5.

The court erred in holding and deciding that the Interstate Commerce Commission had the power and authority to authorize the Kansas City Southern Railway Company, a Missouri corporation to acquire by lease the property of the Texarkana and Fort Smith Railway Company, a Texas corporation, with the inclusion in the authorized lease of the section 5 thereof objected to by complainants, by which said Section the acquiring railroad company was granted authority to remove the general offices of the acquired railroad company from The State of Texas.

6.

The court erred in holding and deciding that the Interstate Commerce Commission had the power and authority to enter

the order made by it and thus authorize the removal of said general offices from The State of Texas, by virtue of the Emergency Railroad Transportation Act of 1933, as passed by Congress.

7.

The court erred in holding and deciding that any of the Acts of Congress gave the Interstate Commerce Commission power and authority to authorize the lease provision complained of in complainants' bill.

8.

The court erred in not rendering judgment for complainants by setting aside the order of the Interstate Commerce Commission authorizing the lease provision complained of.

9.

The court erred in not granting complainants the injunctive relief sought by them against defendants to prevent the carrying out of said order of the Interstate Commerce Commission relative to the lease provision complained of and to prohibit the removal of the general offices of the Texarkana and Fort Smith Railway Company from Texarkana, Texas.

10.

The court erred in holding and deciding that there was such a burden on interstate commerce as to justify the removal of the general offices of the Texarkana and Fort Smith Railway Company from Texarkana, Texas, in violation of the statutory laws of Texas.